

Commissioning Independent NHS Complaints Advocacy

DH/LGA Regional Workshops: Frequently Asked Questions

This document provides answers to the questions that were asked during the Department of Health (DH) / Local Government Association (LGA) regional workshops held in December 2012. It supports the briefing 'Commissioning Independent NHS Complaints Advocacy' published by the LGA on 10 December 2012 available at: http://www.local.gov.uk/web/guest/publications/-/journal_content/56/10171/3816826/PUBLICATION-TEMPLATE

FUNDING

1. Which funding route will be used to allocate the NHS complaints advocacy budgets to local authorities?

The funding route was confirmed in a Local Authority Social Services Letter published on 19 December, which will be the new Local Reform and Community Voices Grant (see at <http://www.dh.gov.uk/health/2012/12/lassl-dh-2012-2/>). The letter makes clear that the funding notification covers 2013/14 and 2014/15.

2. Will the new independent NHS complaints advocacy service support complaints made about the public health services that will be commissioned by the local authority from April 2013?

Yes – advocacy on public health complaints is currently included in ICAS funding, and this will also be included in the funding to enable local authorities to commission NHS complaints advocacy services. There is also provision in the legislation for a complainant, where the complaint remains unresolved at local level, to be supported in taking a public health complaint to the Local Government Ombudsman. The arrangements for handling public health complaints by local authorities will be closely aligned to the arrangements in place for NHS and adult social care complaints, so advocates will be familiar with them,

3. Will the reduction in Legal Aid funding affect the demand for independent NHS complaints advocacy?

Legal Aid funding is currently not available to someone wishing to make an NHS complaint.

ACCESS

4. Does the definition of 'local people/population' that applies to Local Healthwatch also apply to the provision of independent NHS complaints advocacy?

No, clause 185 of the Health and Social Care Act 2012, inserts new section 223A into the Local Government and Public Involvement in Health Act 2007. New section 223A (1) provides that:

"each local authority must make such arrangements as it considers appropriate for the provision of independent advocacy services in relation to its area".

The important issue here is not so much about defining residency but agreeing how the independent NHS complaints advocacy model in your area provides support to people contacting your service, and how it provides appropriate support based on local priorities and need. In practice, most local authorities will want to give their residents choice about where they access the service but there will be practical issues to consider; e.g. providing direct advocacy support when attending meetings outside the area with hospital consultants. The cross-locality working protocol (included in the LGA briefing 'Commissioning independent NHS complaints advocacy') will facilitate support across localities and regions.

Local authorities will manage complaints advocacy according to their local priorities. If they perceive that some demographics have greater need in pursuing their complaint they may want to focus on one-to-one support for specific groups, with a self-help pack for other groups.

CASES/DATA

5. Will ICAS providers let the number of ongoing cases rise?

We do not expect this will happen. Providers will wish to protect and build their reputation for future tendering on other contracts.

6. How can you access closed ICAS data that has been archived by the DH?

Anyone wishing to access archived ICAS data should contact Geoff Delissen geoff.delissen@dh.gsi.gov.uk. DH is discussing appropriate timescales for the retention of closed cases with the ICAS providers, but they will not be retained for more than 14 months after closure.

CLIENTS

7. The actual transition from the outgoing ICAS service to the incoming locally commissioned independent NHS complaints advocacy

service occurs over the Easter weekend so there will be four non-working days (from Good Friday 29 March to Easter Monday on 1 April). How will this affect people wishing to access NHS complaints advocacy over this period?

The last working day for the existing (outgoing) ICAS providers will be Thursday 28 March 2013. The DH has asked the three ICAS providers to continue to take on new clients up to midnight on 28 March 2013 but to explain to anyone contacting the service in the week before that they can choose either to:

- log their complaint with the existing ICAS provider, for it to be transferred to the new provider on 2 April 2013 (1 April is Easter Monday) or
- contact the new locally commissioned service and thus new provider on 2 April 2013

Explaining how the service is changing and giving people choice about which provider they contact gives people the opportunity to 'tell their story' just once.

8. In some local authority areas the provider of the existing ICAS service and the provider of the new independent NHS complaints advocacy service will be the same organisation. Will the provider still have to obtain the clients permission to transfer them and their data?

Yes, because although it is the same provider, the service and the model will be different; it is changing from a national (centrally DH commissioned) service to a local (local authority commissioned) service. The client should also be informed, to give them the option not to transfer.

9. Will the existing ICAS providers contact every client to explain how the service is changing and to seek their permission to transfer to the new service?

DH has asked the providers to communicate with clients in the most appropriate way to advise them about the changes and obtain permission to transfer. So for example, if a client is receiving face to face advocacy, DH would expect the provider to discuss the transfer in person with the client.

10. Do clients have a choice about whether they transfer to the new independent NHS complaints advocacy service?

Yes. If, for any reason, a client does not wish to transfer to the new service their case will be closed and their case data will be sent to DH with all other closed cases. However, whilst the client would be able to continue their complaint, it would be without NHS complaints advocacy support

COMMUNICATIONS

11. What will the DH communication strategy involve? Will DH share this with local authorities before it is implemented to enable local authority commissioners and their communication colleagues to plan local communications and be prepared for queries?

In late January / February 2013, the DH will use a range of communication channels to set out high-level messages explaining that the service is changing. This may include, amongst other things:

- letter to all NHS and local authority chief executives
- message on NHS Choices website
- notification to patient representative groups and citizens advice bureaux

The DH will also share the communication strategy in advance (and as early as possible) with local authorities so that commissioners and their communication colleagues know what messages are being delivered where, when and to whom. This will better enable local communications to be planned in a timely and integrated way, giving enough time to include in local authority decision making processes.

It will then be for local authorities to translate these high level messages into their own local communication plans so that local residents know how to access NHS complaints advocacy in the weeks leading up to the 31 March 2013 and then from 1 April 2013 onwards. Local authorities may wish to use their one-stop shop / customer contact numbers as an access point for queries about the transition and the new independent NHS complaints advocacy service.

Individual local authorities will need to ensure that, amongst others, Local Healthwatch organisations and local NHS Patient Advice and Liaison Services are aware of these arrangements.

12. Will the existing ICAS providers be asked to support the communications strategy?

Yes, the three organisations currently providing the ICAS service will place a banner on their websites explaining the changes to the service.

In addition, in the run-up to transition, the national ICAS helpline will include a recorded message advising people to contact their local authority if they want to access independent NHS complaints advocacy from April 2013.

GENERAL

13. Will the outcome of the consultation on Local Healthwatch secondary regulations include independent NHS complaints advocacy?

No, independent NHS complaints advocacy is not a statutory local Healthwatch function.

14. In some cases, it would be helpful for the existing ICAS providers to share general background information about how the service operates in individual local authority areas (e.g. quality of working relationships with local NHS trusts). Will DH require the ICAS providers to cooperate with any requests of this nature?

Background information on the ICAS contracts and service specification has been placed on the LGA website. However, LA's should let DH know if they believe further information in any particular area would be helpful for transition. DH will then discuss with ICAS providers. Early local conversations with providers are encouraged to enable the new service to start successfully.

15. Can the ICAS 'brand' continue to be used if the local authority has agreed a new interim 1 year contract with the existing provider?

No, ICAS will no longer exist. So, the ICAS name, ICAS logos and ICAS telephone numbers cannot be used.

16. Does ICAS / Independent NHS complaints advocacy cover children and young people?

Yes. When making or intending to make a complaint, children and young people are able to receive independent advocacy services.

Independent advocacy services cover all complaints "under a procedure operated by a health service body or independent provider", and NHS complaints arrangements cover complaints from those under 18 years of age. In deciding whether to accept a complaint from a child, the NHS will generally use the test of 'Gillick competence'. This decision rests with the NHS, not with the provider of independent complaints advocacy.

The Gillick competence Law Lords Ruling 1985:

"...whether or not a child is capable of giving the necessary consent will depend on the child's maturity and understanding and the nature of the consent required. The child must be capable of making a reasonable assessment of the advantages and disadvantages of the treatment proposed, so the consent, if given, can be properly and fairly described as true consent."

http://www.nspcc.org.uk/inform/research/questions/gillick_wda61289.html

17. What options do I have if the procurement process for Independent NHS Complaints Advocacy does not produce bids of sufficient quality to move towards awarding a contract?

The first option is to re-tender, but depending on the timing and timescale involved, you may risk not being able to award the contract and work through transition issues in time for the new Independent NHS Complaints Advocacy Service to be in place by 1 April 2013.

There are a further two options open to commissioners, because in tendering for contracts, public organisations reserve the right to cancel the tendering process and not award a contract, or decide not to re-tender. Cancelling the procurement process owing to lack of bids meeting minimum evaluation criteria, may involve referring to the local authority's procurement/contract standing orders and gaining the necessary permissions at the appropriate level.

Work done by the Local Government Association (LGA) Healthwatch national implementation team in this area has identified the following options, which may be practical:

- award a new one year contract to the existing ICAS provider. This would minimise transition issues such as case/advocate transfer.
- vary an existing advocacy provider contract (e.g. IMHA/IMCA) to enable them to deliver Independent NHS Complaints Advocacy

In both of these cases it would be advisable to consider a maximum contract term of one year, carrying out a full procurement process for the service from April 2014.

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